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10/050,393	01/16/2002	Marvin Byrd		6190

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EXAMINER

LUM VANNUCCI, LEE SIN YEE

ART UNIT PAPER NUMBER

3611

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,393

Applicant(s)

BYRD, MARVIN

Examiner

Ms. Lee S. Lum

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) all is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. An Amendment, Substitute Spec, and drawing corrections, were filed 1/23/04. The Amendment cancelled Claims 2, 3 and 5, and added Claims 8-14. The Substitute Spec will NOT be entered because it contains issues of clarity, discussed in paragraph 4 below.

2. The corrected drawings are objected to under 37 CFR 1.83(a) because of the following issues:

The drawings must show every feature of the invention specified in the claims. The figures do not identify "upper frame members 37", and the "X configuration 38" is not depicted adequately in fig 3A. Also, according to the Substit Spec, p 6, "holes 6 in the lower end of rear frames 34" are not identified.

On p 3 of the drawings, each figure must be separately labeled "Fig 3A", etc, not merely "3A". Also, in fig 3A, element "1" is labeled with a character that appears to be a "7".

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The disclosure is objected to because of the following issues:

in Claim 6, "en" is a misspelling.

in Claim 13, "holses" is a misspelling.

In Claim 10, "front end" should be preceded with "the".

The following elements lack antecedent basis:

In Claims 1, 13, 14 – height,

In Claim 4 – arms,

In Claim 10 – lower frame member,

In Claim 11 – middle.

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4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4 and 6-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original Spec fails to clearly describe the invention because of omissions in "Description of the Invention" and the drawings, as discussed in the previous Office Action.

The Substitute Spec will NOT be entered because of the following issues:

On p 5, lines 17-18, the "lower ends 34" do not appear to be "pivotally secured to the rear ends 32", of either embodiment in figs 3 and 4. Also, the "lower ends" should read "lower ends 34", and "rear ends 32", respectively, with the subsequent "34" and "32" deleted. That is, the element number should immediately follow the element name – the entire Spec should be reviewed and amended accordingly, to further comprehension.

Also, on p 5, lines 19-20, the "upper side frame members 35" are not "secured to the upper ends 36 of the rear frame members 33", but somewhere between upper and lower ends of the rear frame members.

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5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4 and 6-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1, the "forwardly extending upper side members" do not appear coupled to the "upper ends of the rear frame members". In the paragraph reciting the "tow bar attachment", line 2 recites "a pin-coupling system", while line 4 recites "said towbar having a coupling system in both its ends", rendering this portion of the Claim unclear.

In Claims 1 and 6, the language beginning with "such as" is indefinite because it is unclear if the "motorized wheelchair" and "golf cart" are included with the invention. If this is the case, then the preamble should include the phrase "in combination with".

In Claim 6, "style devise" is indefinite.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A. As best understood, **Claims 1, 4, 6-8, 10 and 12-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lockard et al 4989890 in view of Kurschat 5064209.

As best understood, Lockard discloses a companion rider wheelchair comprising
In fig 2, two lower side members 24 having front 22, and rear 24, ends, the rear end having holes for adjusting rear wheel F,

Two rear members 26/142, the lower end 26 having holes for the rear wheel, and

The upper end mechanically coupled to forwardly extending upper side member 14/18, the latter supporting seat C,

Second set of forwardly extending upper frame member 270 (fig 1) constituting arms,

The rear wheels F mountable to any of the abovementioned holes, and,

Two caster assemblies E including holes for the caster wheels,
Wherein the wheelchair is collapsible (col 2, lines 13-14), and
Coupled to a motorized vehicle, as best understood.

Lockard does not disclose a towbar attachment for the wheelchair, while Kurschat shows this configuration including

towbar 48 having a quick-release, pin-coupling system at both ends (pin 50, fig 3, and towrod/pin 54, fig 7), wherein the attachment is coupled to motorized wheelchair 12, and, the towbar may be permanently fixed (i.e., towbar is always connected) to the lower frame member.

It would have been obvious to one with ordinary skill in the art at the time the invention was made to include this configuration, as shown in Kurschat, so that the wheelchair may be transported/towed by another vehicle, thus the wheelchair user may enjoy a journey without effort.

B. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lockard in view of Kurschat, and in further view of Radjenovic et al 5915709.

The previous references do not disclose the frame members as make of hollow metal, while Radjenovic shows this characteristic in col 2, line 35. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include this material, as shown in Radjenovic, as one type of well-known material to provide sufficient structural strength and durability for the application.

C. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lockard in view of Kurschat, and in further view of Hawes et al 3937489.

The previous references do not disclose the towbar as being curved to form a footrest, while Hawes' towbar 16 shows this configuration. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include this feature, as shown in Hawes, to provide increased comfort and enjoyment for the wheelchair rider while being transported.

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7. The prior art made of record, and not relied upon, is pertinent to the Applicant's disclosure: Couture 5842710, Hayes et al 5788255, Milligan 5269548.

8. RESPONSE TO REMARKS: Moot in light of amendments.



9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Communication with the Examiner and USPTO

Any inquiry concerning this communication should be directed to Ms. Lum at (703) 305-0232, M-F, 8-5. Our fax number is 703 872-9306. Any inquiry of a general nature, or relating to the status of this application/proceeding should be directed to Customer Assistance at (703) 306-5771.

Ms. Lee S. Lum
Examiner
5/25/04



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